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To: Commissioner of Patents  
U.S. Patent and Trademark Office

Fax no.: (571) 273-8300

From: David A. Steffes  
Tel. (202) 736-8000

Date: 11 September 2006

**Re:**

Serial No.: 09/993,234

Group Art Unit: 1642

Confirmation No.: 1337

Examiner: Gary B. Nickol

Filed: November 19, 2001

Atty. Docket No.: 22338-01207

Applicant: Avi J. ASHKENAZI

For: APO-2 LI AND APO-3 POLYPEPTIDES

**CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.8**

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FAX NUMBER (571) 273-8300 THE DATE SHOWN:

- Reply Brief to Examiner's Answer

SIGNATURE

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PRINTED NAME

11 Sept 2006  
DATE

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In Re Ashkenazi  
Application No. 09/993,234  
Reply Brief to Examiner's Answer

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application No.: 09/993,234 Confirmation No.: 1337  
Applicant: Avi J. ASHKENAZI  
Filed: November 19, 2001  
Group Art Unit: 1642  
Examiner: Gary B. Nickol  
Docket No.: 22338-01207  
Customer No.: 33,694

**REPLY BRIEF TO EXAMINER'S ANSWER**

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This communication is being provided under 37 CFR §41.41 in response to the Examiner's Answer mailed on July 12, 2006. This response is due within two months of the mailing date of the Examiner's Answer and is therefore being timely submitted on September 11, 2006. No fees are due in association with the filing of this communication.

In Re Ashkenazi  
Application No. 09/993,234  
Reply Brief to Examiner's Answer

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#### REMARKS

In his answer, the Examiner withdrew the 35 U.S.C. § 112, 1<sup>st</sup> paragraph written description rejection of claim 34. Accordingly, that rejection is no longer at issue and need not be reviewed on appeal. The rejection regarding claims 34 and 36-39 and whether they are anticipated under 35 U.S.C. § 102(e) by U.S. Patent No. 6,153,402 ("Yu *et al.*") remains for review on appeal.

Appellant would like to bring to the attention of the Examiner/Board, the existence of an interference, No. 105,438, declared on April 18, 2006, that may pertain to subject matter related to the instant application. The present application is a divisional of and claims priority under 35 U.S.C. § 120 to the application, USSN 08/828,683, that issued into the patent involved in the interference, U.S. Patent No. 6,469,144. Appellant notes that it became aware of the existence of the interference after the original and amended appeal briefs had been filed.

Appellant concurs with the Examiner that the amino acid in positions 25 and 198 in SEQ ID NO:6 is a Gln and Arg, respectively. The sequence the Appellant presented in the Appeal Brief appears to have omitted the Gln residue at position 25 and thus shifted the remaining residues one position. However, the change does not effect the Appellant's argument as presented in the original and amended Appeal Brief with respect to the prior art effect of Yu *et al.*

Appellant is not requesting an oral hearing for the present appeal.

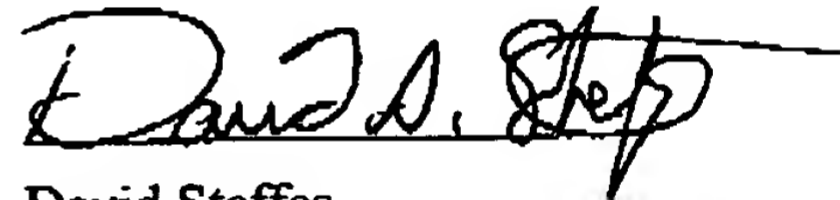
In Re Ashkenazi  
Application No. 09/993,234  
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In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Appellant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 18-1260 referencing docket no. 2233801207. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

Dated: September 11, 2006

By:



David Steffes

Registration No. 46,042

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